ceases to be a discretion and becomes a rule of law. The definition of substantial justice has been stated by the learned Chief Justice in the following words:

"Nor would we attempt any definition of what is substantial justice beyond suggesting in this connection that substantial justice is done when a rightful conviction is upheld and a wrongful one is quashed."

It is unfortunate that the learned deputy public prosecutor posted the petition to the Officer in Charge of Police District instead of direct to the magistrate's court at Kuala Selangor. Bearing in mind the words of the learned Chief Justice (above), I am satisfied that this is a proper case in which to exercise my discretion, and I will allow the application.

Counsel for the respondent urged me to treat the application as an appeal. I have complied with counsel's request; I have considered the notes of evidence and judgment of the learned magistrate. It transpired that the prosecution called two witnesses, the first was a police corporal. He testified that on February 6, 1966 at about 10.45 p.m., while on his rounds at Batang Berjuntai town, he saw four male Indians talking among themselves on the five-foot way of a cinema. The respondent was one of them. Then the corporal observed the respondent taking out a knife and holding it waist-high. The corporal demonstrated to the learned magistrate how that was done. The corporal went up to the respondent, arrested him, and dispossessed him of the knife. He was then taken to the police station. The other prosecution witness was the O.C.S. Batang Berjuntai Police Station, who received the report of the corporal and placed the respondent in custody. On those facts the respondent was charged "with possession of an offensive weapon in a public place otherwise than for a lawful purpose" under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958. The learned magistrate acquitted him without his defence being called; he based his decision on three grounds. Firstly, he was of the view that the knife was an ordinary kitchen knife obtainable in most shops selling kitchen-ware and consequently was not an offensive weapon. I disagree with him. In view of its size and shape the knife was undoubtedly a lethal weapon and, if so minded as a weapon of offence was likely to cause hurt. Secondly, the learned magistrate was of the view that the presumption under subsection (2) of the section should not be invoked in order to supplement a *lacuna* in the prosecution case on the ground that the case was not fully investigated. In my opinion the learned magistrate took a wrong view of the law. What the prosecution had to prove was to establish a *prima facie* case in the sense of adducing evidence that the respondent was in possession of an offensive weapon in a public place. It is not essential for the prosecution to prove the absence of lawful purpose. The onus of negativing the averment was for the defence to prove that he had a lawful purpose to possess the knife. Lawful purpose must here be used in the sense of purpose supported by law and to avail as a defence must relate to the actual time the weapon was found in the respondent's possession. An analogy can be drawn from the many decisions under the Emergency Regulations, 1951, notably the Court of Appeal case of *Abdul Manap* v. *Public Prosecutor*.[2] Thirdly, the learned magistrate took the view that no dangerous situation existed at the time of the arrest and therefore came to the conclusion that there was reasonable doubt as to whether the respondent kept the knife for an unlawful purpose. That, to my mind, was a finding of fact based on speculation since the respondent had not given evidence to explain his purpose for possessing the knife.

I am therefore of the view that on the evidence as it stands a *prima facie* case has been adduced and by virtue of sub-section (2) it is for the defence to negative any unlawful purpose. The learned magistrate was clearly in error. I therefore revise his decision and make an order that he should call for the defence.

Order accordingly.

Solicitors: *Lovelace & Hastings.*

LEONG QUAKE HIN v. LEE KOR FAN

[A.C.J. (Gill J.) August 25, 1966]

[K.L. — Civil Appeal No. 20 of 1966]

Mining — Cancellation of sub-lease — Technical difficulties — Mining Enactment (Cap. 147), ss. 16(iii) (b) and 82.

This was an appeal against the decision of the senior inspector of mines rejecting the appellants' claim for cancellation of a mining sub-lease. The claim for cancellation was based on the ground that the respondent was in breach of the sub-lease as he had not during a period of six months employed sufficient labourers or labour saving appliances on the land and that the land was only used for tailing retentions while mining an adjacent land. The respondent did not deny the truth of the complaints but stated that he had not worked the land as it was mostly hilly and could not be mined independently.

Held: (1) although the senior inspector of mines had a discretion as regards cancellation of the sub-lease this discretion has to be exercised judicially on cause shown by the person complained against;

(2) technical difficulties about mining the land did not amount to a sufficient cause for non-cancellation of a sub-lease and in the present case there was no reason why the respondent could not have started mining operations on the land subleased to him before mining his own adjoining land;

(3) the appeal must therefore be allowed and an order made for the sub-lease to be cancelled.

Case referred to:—

(1) *Muthiah* v. *Lee Kor Fan* [1966] 1 M.L.J. 105.

CIVIL APPEAL.

K. L. Lam for the appellant.

Respondent in person.

Cur. Adv. Vult.

Gill J.: This is an appeal under section 107 of the Mining Enactment (F.M.S. Cap. 147) against a decision of the senior inspector of mines, Selangor, rejecting the appellant's claim for the cancellation of sub-lease No. 16447 dated 30th January, 1962 granted by him as the holder of mining certificate No. 1420 for lot 3027 in the mukim of Ampang to the respondent.

The claim for cancellation of the sub-lease was made on the ground that the respondent was in breach of clause 8(iii) of the sub-lease in that he had not during a period of six months employed at least 54 labourers or labour-saving apparatus equivalent thereto as prescribed in section 16(iii)(b) of the Mining Enactment and that the land was only used for tailings retention while mining an adjacent piece of land.

The breach complained of was not denied by the respondent. The explanation he offered for not working on the land sub-leased to him was that the land was mostly hilly and could not be mined independently and that moreover there was no water to mine the land. He further stated that this land had to be mined in conjunction with the adjoining land comprised in mining certificate No. 1419 which belonged to him, and that he proposed to work out all the low ground before working the high ground on mining certificate No. 1420. He still had about 11 or 12 acres of his own land to work and it would take him about 1½ years to mine that land.

The senior inspector of mines rejected the appellant's complaint on the ground that it was difficult to mine high ground efficiently or economically other than by conventional methods and that there was also no water supply for operating the mine on the land comprised in mining certificate No. 1420 unless it was mined in conjunction with the land comprised in mining certificate No. 1419. In short, he said that the breach of clause 8(iii) of the sub-lease could not be considered very serious as it had to a large extent resulted from the technical difficulties of mining the land.

Similar difficulties were raised by this very respondent in the case of *Muthiah* v. *Lee Kor Fan.*[1] MacIntyre J. said in that case (at page 112):—

> "If I should make an order which would allow the permit holders to carry on as they had planned to mine these lands, it would be tantamount to exercising my discretion to deprive a lawful owner of property the right to use it to his best advantage.
>
> Whether the plaintiff is able to find a suitable dumping area or not is his concern but an inspector of mines had wide powers under section 82 of the Mining Enactment to direct any occupier of mining land to deposit his tailings on State land or mining land. As for sources of water supply to work a mine it is again a matter for negotiation and arrangement with owners of adjoining lands."

With respect I agree with and adopt the observations of the learned judge in that case.

It is true that the senior inspector of mines has discretion as regards cancellation of a sub-lease, but this discretion has to be exercised judicially on cause shown by the person complained against. Technical difficulties about mining the land, in my opinion, do not amount to a sufficient cause for non-cancellation of a sub-lease. The sub-lessee must be deemed to have known these technical difficulties when he obtained the sub-lease. In the present case the adjoining land belongs to him and there was no reason why he could not have started mining operations on the land sub-leased to him before mining his own land.

In the circumstances I would allow the appeal, set aside the order of refusal by the senior inspector of mines and make an order that the sub-lease be cancelled. The respondent to pay the costs of this appeal.

Appeal allowed.

Solicitors: *Oorjitham & Lam.*

THONG SENG POH & ANOR. v. THONG MENG TEE

[A.C.J. (Ismail Khan J.) August 27, 1966]

[Seremban — Civil Appeal No. 3 of 1964]

Landlord and Tenant — Claim for possession — Mode of assessing value to landlord of possession of his own premises.

Practice and Procedure — Appeal to Federal Court — Jurisdiction — Amount or value of subject-matter — Court of Judicature Act, 1964, s. 68(1).

The respondent had claimed possession of certain premises on the ground that he reasonably required the premises for his own occupation and the appellants had alternative accommodation. There was also a claim for mesne profits. The sessions court made an order for possession of the premises and for mesne profits at the rate of $60 a month from the date of judgment. The appellants' appeal to the High Court was dismissed and they applied for stay of execution pending the determination of their appeal by the Federal Court. Their application was resisted by the respondent on the ground that the subject matter of the appeal was less than $500 and no leave of the Federal Court had been obtained. The rent of the premises was $32 a month and it was argued, the rent for the twelve months would be less than $500. For the appellants it was argued that appeal to the Federal Court was a matter of jurisdiction and the value of the subject matter was more than $500.

Held: the burden of showing that the subject matter was less than $500 was on the respondent and as in this case the value of the possession of the premises, of which the respondent had been denied for over twenty years, was certainly more than $500, the objection of the respondent must fail.